

JUL 23 1992

# Federal Communications Commission

**FEDERAL COMMUNICATIONS COMMISSION**  
**OFFICE OF THE SECRETARY**

**IN THE MATTER OF**

AMENDMENT OF SECTION 1.773 OF  
THE COMMISSION'S RULES REGARDING  
PLEADING CYCLE FOR PETITION  
AGAINST TARIFF FILINGS MADE  
ON 14 DAYS NOTICE

CC DOCKET NO. 92-117

**TO: THE COMMISSION**

**COMMENTS OF  
CAPITAL CITIES/ABC, CBS, NBC, AND TBS**

Capital Cities/ABC, Inc. ("Capital Cities/ABC"), CBS Inc. ("CBS"), National Broadcasting Company, Inc. ("NBC"), and Turner Broadcasting System, Inc. ("TBS") (collectively, "the Networks"), by their attorneys, hereby file these comments in response to the Notice Of Proposed Rulemaking ("NPRM") issued June 1, 1992, FCC 92-215, in the above-captioned proceeding.

In the NPRM, the Commission proposes to modify the pleading cycle governing petitions seeking investigation, suspension, or rejection of tariff filings submitted by carriers on 14 days' notice. In order to provide the Commission staff additional time to evaluate the pleadings filed by petitioners and carriers, the Commission proposes to amend Section 1.773 of its rules, 47 C.F.R. § 1.773, to reduce the time period from seven calendar days to six calendar days for filing petitions against tariffs submitted on 14 days' notice. Additionally, the Commission proposes to reduce the time period for carriers filing replies

No. of Copies rec'd  
List A B C D E

of 9

from four days (plus additional time for intervening holidays and for mailing time) to three calendar days total. Finally, the Commission seeks comment on a proposal that petitions filed against tariffs submitted on 14 days' notice be served by hand or by facsimile on the day they are filed with the Commission.

**I. THE COMMISSION SHOULD REJECT THE PROPOSAL TO REDUCE THE TIME ALLOWED FOR FILING PETITIONS FROM SEVEN TO SIX DAYS BECAUSE THAT PROPOSAL WOULD DEPRIVE USERS OF AS MUCH AS ONE-THIRD TO ONE-HALF OF THE TIME AVAILABLE FOR PREPARING A MEANINGFUL PETITION**

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The Networks oppose the proposed reduction from seven days to six days of the period for filing petitions against tariffs submitted by carriers on 14 days' notice. The currently effective seven-day filing period already is barely sufficient, and in some cases insufficient, to complete all the steps necessary to file a petition. Specifically, a petitioner must obtain notice of a tariff filing, obtain a copy of it from the FCC, distribute it to knowledgeable personnel, analyze the cost, rate, and/or service implications of the filing, formulate arguments against a potentially unjust and unreasonable or discriminatory tariff proposal, put those arguments into writing, distribute the draft petition to appropriate personnel for final review, and file it with the Commission. A reduction from a seven-day to a six-day filing period would exacerbate greatly the already existing difficulties of challenging an unreasonable or discriminatory tariff proposal filed on 14 days' notice.

Indeed, the proposed reduction of the pleading cycle from seven days to six days is not "just" a one-seventh reduction in the amount of time available to petitioners; it is akin to a one-third reduction of the time available. This is because potential petitioners routinely do not obtain notice of a carrier's tariff proposal until a few days after the already abbreviated pleading cycle has begun to run. For example, the FCC issues at the earliest on Monday afternoons the public reference log of tariffs filed on the previous Friday. This delay already reduces the notice period available to petitions by two days. Moreover, the delay in obtaining notice of tariff filings is exacerbated when (1) a federal holiday falls between the tariff filing date and the next business day, or (2) the FCC staff delays issuing the log, or (3) both of these events occur. In those cases, by the time interested parties obtain notice that a tariff has been filed, four or more days of the currently-effective seven-day pleading cycle already have expired. Moreover, because the FCC's tariff reference room is open to the public only in the afternoon, as a practical matter, often an interested party first is able to obtain a copy of the relevant tariff the afternoon after the FCC releases to the public its tariff transmittal log. By reducing the pleading cycle from seven days to six days, the Commission's proposal would allow only 1 1/2 days of usable time in the pleading cycle and would make it virtually impossible for a party to file a meaningful petition.

The importance of the FCC's tariff reference log being both accurate and timely cannot be overemphasized. As a practical matter, users must rely on the FCC's tariff log to obtain notice that a tariff proposal of significance to them has been filed.<sup>1/</sup> Despite this reliance and despite the fact that the Commission has adopted shortened notice periods for most types of tariff filings, the Common Carrier Bureau's staff often fails to make a tariff log publicly available on a timely basis (next day after filing) or fails to log a particular tariff until several days after it has been filed.<sup>2/</sup>

To the extent the Commission intends to reduce by one day the pleading cycle for filing petitions against tariffs, therefore, it should change its rules so that the date for filing petitions begins to run from the date the tariff filing appears

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<sup>1/</sup> Most parties potentially affected by tariff filings are not in a position to copy on a routine basis all tariff filings made every day in order to determine whether they may be affected. Rather, they rely upon the FCC's publication of the tariff reference log to accomplish this review on a more selective basis. Absent being able to use the log for this purpose, the Bureau's Tariff Division would be swamped by members of the public checking several times a day for new tariff filings.

<sup>2/</sup> For example, even though the tariff log listing tariff transmittals filed June 12, 1992, was dated June 15, 1992, that log was not made available to the public until June 16, 1992. Four days of the pleading cycle were lost. Moreover, tariff transmittals filed on 14 days' notice often are first placed on the log several days after they are filed. Last month, the logs of June 9, June 18, and June 22 each listed tariff transmittals filed on 14 days' notice several days after they were filed with the Commission. In one case, the FCC public reference tariff log first provided notice of a tariff filing on the day the seven-day pleading cycle expired (see log of May 6, 1992); and in at least two recent cases the log provided notice of a tariff filing several days after the seven-day pleading cycle expired (see tariff logs of July 10 and June 3, 1992).

in the publicly released tariff log, or, at the least, it should adopt procedures guaranteeing that the daily tariff logs are made available on a next day basis. Otherwise, the proposed reduction in the time allowed for filing petitions would only further hinder petitioners seeking to challenge the lawfulness of unjust, unreasonable or discriminatory tariff proposals.<sup>3/</sup>

**II. IF THE BUREAU STAFF NEEDS MORE TIME TO EVALUATE PLEADINGS RELATED TO TARIFFS FILED ON 14 DAYS' NOTICE, THE COMMISSION COULD REDUCE THE TIME ALLOWED FOR CARRIERS TO FILE REPLIES IF PETITIONS ARE REQUIRED TO BE SERVED BY HAND OR FACSIMILE ON THE DAY THEY ARE FILED**

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If the Commission's staff needs additional time to review tariff filings, then it should reduce the carriers' reply period from four to three calendar days if the carrier is served by hand or by facsimile on the same day that the petition is filed with the Commission. A reduction in the pleading cycle for carriers, without a reduction in the pleading cycle for petitioners, would be reasonable for two reasons.

First, the pleading cycle for tariffs is carrier-initiated, and, therefore, carrier-controlled. Unlike users who under most

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<sup>3/</sup> If the Commission were to adopt the proposal reducing the time allowed for filing petitions against tariffs made upon 14 days' notice, the Commission also should adopt more stringent requirements for the notice dominant carriers must provide to their affected customers concerning tariff proposals that increase any rate or charge or would effectuate a discontinuance of service. See 47 C.F.R. § 61.58(a)(4). This latter requirement should be modified to require that the notice describing the tariff changes actually be received by the affected customer in writing no later than the tariff filing date.

circumstances are provided no warning when a questionable tariff proposal made on 14 days' notice will be filed or what the subject matter of the tariff will be, a carrier can choose the day that it will make a tariff filing, choose the content of the tariff change and, therefore, can ensure in advance that it has sufficient technical, legal and other resources to respond to any petition within a three-day pleading cycle.

Second, in addition to the carrier's advantage of controlling the pleading cycle, the carrier also presently is able to take advantage of the Commission's rules so that the carrier has more time to respond to the petition than the petitioner has to respond to the tariff filing. As noted by the Commission in the NPRM, intermediate holidays currently are counted against a petitioner in calculating the seven-day pleading cycle while holidays are not counted against a carrier in calculating the four-day reply period. Moreover, a carrier is provided an extra three days when the petition is served by mail. As a result, a carrier sometimes now has as many as nine or ten days (four days for reply plus two days for a weekend plus three days for mailing plus an additional day for any federal holiday) to respond to a petition which a user effectively had only two or three days to prepare. As long as the carrier is served by hand delivery or facsimile on the date the petition is filed, it would be equitable to provide the carrier with three days to file its reply if the Commission wishes to shorten the pleading cycle.

**III. CONCLUSION**

For the foregoing reasons, Capital Cities/ABC, CBS, NBC, and TBS urge the Commission to take such actions as are consistent with the views expressed herein.

Respectfully submitted,

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JULY 23, 1992

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**CERTIFICATE OF SERVICE**

I, Roseanne Markham, do hereby certify that true and correct copies of the foregoing document, "Comments of Capital Cities/ABC Inc., CBS, NBC, and TBS," were served by Hand this 23rd day of July 1992, on the following:

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